

DEPARTMENT OF STATE REVENUE

04-20200376.ODR

Final Order Denying Refund: 04-20200376
Sales Tax
For The Tax Year 2020

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Final Order Denying Refund.

HOLDING

Individual was not entitled to refund of Indiana sales tax on his vehicle purchase because Individual purchased a vehicle and took possession of the vehicle at the Indiana Dealership's business location in Indiana. The transaction was an Indiana sale subject to Indiana sales tax.

ISSUE

I. Sales Tax - Refund.

Authority: IC § 6-8.1-9-1; IC § 6-2.5-2-1; IC § 6-2.5-13-1; IC § 6-2.5-2-3; Sales Tax Information Bulletin 28S (July 2020); Sales Tax Information Bulletin 84 (July 2020).

Taxpayer protests the refund denial of sales tax which was collected at the time of the sale.

STATEMENT OF FACTS

Taxpayer is an individual residing in West Virginia. In July 2020, Taxpayer purchased a vehicle from a dealership in Indiana ("Dealership"). Dealership collected Indiana sales tax and completed Form ST-108NR. The sales tax was calculated at six percent of the sale price of the vehicle; the sales tax rate for West Virginia. Taxpayer took possession of the vehicle at the Dealership in Indiana and drove the car to West Virginia.

In August 2020, Taxpayer proceeded to title and register the vehicle in West Virginia. Taxpayer was required to pay a "privilege tax" at the West Virginia Division of Motor Vehicles ("WV DMV") for titling the vehicle in the state. After paying the "privilege tax" to WV DMV, Taxpayer filed a claim for refund requesting the Indiana Department of Revenue ("Department") refund the full amount of Indiana sales tax collected by the Dealership.

The Department denied the refund request, stating Taxpayer had no basis for the refund because the Dealership correctly charged Indiana sales tax at the West Virginia sales tax rate and issued a Form ST-108NR at the time of purchase.

Taxpayer protested the refund denial. An administrative phone hearing was held. This final Order Denying Refund results. Further facts will be provided as necessary.

I. Sales Tax - Refund.

DISCUSSION

The Department determined Taxpayer was not entitled to a refund. In its refund denial letter, the Department explained that:

The Dealership correctly charged the West Virginia sales tax rate and issued a ST-108NR at the time of purchase.

Taxpayer argued that he is entitled to a full refund because he should not have paid tax twice on the same vehicle purchase and that the Department erroneously denied his refund.

IC § 6-8.1-9-1(a) affords a taxpayer a statutory right to file a claim for refund. This statute provides, in part:

If a person has paid more tax than the person determines is legally due for a particular taxable period, the

person may file a claim for a refund with the department.

Indiana imposes an excise tax called "the state gross retail tax" or "sales tax" on retail transactions made in Indiana. IC § 6-2.5-2-1(a); [45 IAC 2.2-2-1](#). A retail sale is sourced to Indiana and subject to Indiana sales tax when the transaction is a "retail sale" and the product is received by the purchaser at the business' location in Indiana. IC § 6-2.5-13-1(d)(1). A retail merchant that has a physical presence in Indiana shall collect the tax as an agent for the State. IC § 6-2.5-2-1(b).

The Department's Sales Tax Information Bulletin 28S (July 2020), addressing issues concerning sales of motor vehicles, explains in part:

IV. INTERSTATE COMMERCE RULES AND SPECIAL TAX RATE

B. Vehicles Delivered Outside Indiana

A vehicle or trailer sold in interstate commerce is not subject to the Indiana sales tax. To qualify as being "sold in interstate commerce," the vehicle or trailer **must be physically delivered, by the selling dealer to a delivery point outside Indiana**. The delivery may be made by the dealer or the dealer may hire a third-party carrier. Terms and the method of delivery must be indicated on the sales invoice. The dealer must document terms of the delivery and must keep a copy of such terms of delivery to substantiate the interstate sale. *The exemption does not apply to sales to out-of-state buyers in which the buyer takes physical possession of a vehicle or trailer in Indiana, nor is the exemption valid if the buyer, and not the seller, hires a third-party carrier to transport the vehicle or trailer outside Indiana.* If the buyer hires the carrier, the carrier is acting as an agent for the buyer; thus, the buyer takes physical possession within Indiana. Possession taken within the state does not qualify as an interstate sale. **(Emphasis in original)** *(Emphasis added)*.

A licensed Indiana car dealer generally must either collect sales tax or an exemption certificate at the time of the sale of the vehicle. To qualify as an interstate commerce exemption, it is important to document the terms and the method of delivery on the sales invoice and maintain copies of the delivery documents to substantiate the vehicle was sold in interstate commerce.

Taxpayer argues he is entitled to a sales tax refund from Indiana because he was required to pay tax a second time on the same vehicle purchase when he titled the vehicle at the WV DMV. In support, Taxpayer provided a copy of the ST-108NR (Certificate of Gross Retail or Use Tax Paid on the Purchase of a Motor Vehicle for a Nonresident), a Bill of Sale showing the sales tax paid in Indiana, and a receipt from WV DMV registering the vehicle and showing the "privilege tax" paid.

Taxpayer's argument that Indiana should have remitted the sales tax to West Virginia is mistaken. The documentation shows the transaction took place at the Dealership located in Indiana. The transaction began and concluded in Indiana when Taxpayer (as the Buyer) took possession of the vehicle he purchased in Indiana. The Dealership delivered the vehicle to Taxpayer in Indiana. Thus, the sale of the vehicle was an Indiana sale subject to Indiana sales tax. IC § 6-2.5-13-1(d)(1). The vehicle was not sold in interstate commerce because the Dealership did not deliver the vehicle outside of Indiana. Since Taxpayer was not entitled to any exemption under Indiana law, Dealership was required to collect Indiana sales tax at the time the vehicle was sold.

In 2014, the Indiana General Assembly enacted legislation, codified at IC § 6-2.5-2-3, which offers deferential treatment on certain qualified Indiana sales of motor vehicles. Specifically, a purchaser of a vehicle who purchases a vehicle in Indiana but intends to title and register the vehicle to be used in states other than Indiana (within 30 days after the sale) may pay the tax rate of the state for which the vehicle is ultimately titled, registered, and used. *Id.* The Department's Sales Tax Information Bulletin 84 (July 2020) further explains the computation of the sales tax concerning the qualified Indiana sales. The applicable sales tax rate for West Virginia is six percent. Therefore, Indiana Dealership collected the correct, reduced amount of sales tax. To be clear, that sales tax was remitted to Indiana, not to West Virginia. Under IC § 6-2.5-2-3, Indiana sales tax was collected at the West Virginia rate on the Indiana transaction.

Finally, Taxpayer asserts he should not have to pay tax twice on the same vehicle purchase. Taxpayer's complaint with respect to West Virginia's policy of not allowing a Buyer a credit or exemption for sales tax paid for an out-of-state purchase rests with West Virginia. Indiana has neither control nor authority to address that matter. It is up to the purchaser's state of residence to determine whether that state will give a purchaser credit or an exemption for sales tax paid to Indiana when he purchases a vehicle out of state.

In summary, Taxpayer's vehicle sale was an Indiana retail transaction subject to Indiana sales tax. His purchase qualified for deferential treatment under IC § 6-2.5-2-3, and Indiana Dealership collected the remitted sales tax at the correct rate of six percent. Therefore, Taxpayer is not entitled to a refund.

FINDING

Taxpayer's protest is denied.

Nov. 17, 2021

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